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Subpart 246.8—Contractor Liability for Loss of or Damage to Property of the Government

SOURCE: 79 FR 26106, May 6, 2014, unless otherwise noted.

246.870 Contractors' counterfeit electronic part detection and avoidance systems.

246.870-1 Scope.

This section—

(a) Implements section 818(c) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81); and

(b) Prescribes policy and procedures for preventing counterfeit electronic parts and suspect counterfeit electronic parts from entering the supply chain when procuring electronic parts or end items, components, parts, or assemblies that contain electronic parts.

246.870-2 Policy.

(a) *General.* Contractors that are subject to the Cost Accounting Standards (CAS) and that supply electronic parts or products that include electronic parts and their subcontractors that supply electronic parts or products that include electronic parts, are required to establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to do so may result in disapproval of the purchasing system by the contracting officer and/or withholding of payments (see 252.244-7001, Contractor Purchasing System Administration).

(b) *System criteria.* A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas (see 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System):

- (1) The training of personnel.
- (2) The inspection and testing of electronic parts, including criteria for acceptance and rejection.
- (3) Processes to abolish counterfeit parts proliferation.
- (4) Processes for maintaining electronic part traceability.
- (5) Use of suppliers that are the original manufacturer, sources with the express written authority of the original manufacturer or current design activ-

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ity, including an authorized aftermarket manufacturer or suppliers that obtain parts exclusively from one or more of these sources.

(6) The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts.

(7) Methodologies to identify suspect counterfeit electronic parts and to rapidly determine if a suspect counterfeit electronic part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts.

(9) Flow down of counterfeit detection and avoidance requirements.

(10) Process for keeping continually informed of current counterfeiting information and trends.

(11) Process for screening the Government-Industry Data Exchange Program (GIDEP) reports and other credible sources of counterfeiting information.

(12) Control of obsolete electronic parts.

246.870-3 Contract clause.

(a) Except as provided in paragraph (b) of this section, use the clause at 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, in solicitations and contracts when procuring—

- (1) Electronic parts;
- (2) End items, components, parts, or assemblies containing electronic parts; or
- (3) Services where the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

(b) Do not use the clause in solicitations and contracts that are set-aside for small business.

PART 247—TRANSPORTATION

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36466, July 31, 1991, unless otherwise noted.

247.001 Definitions.

For definitions of “Civil Reserve Air Fleet” and “Voluntary Intermodal Sealift Agreement,” see Joint Pub 1-02, DoD Dictionary of Military and Associated Terms. See additional information at PGI 247.001 for the Voluntary Intermodal Sealift Agreement program.

[75 FR 51417, ≤Aug. 20, 2010]

Subpart 247.1—General

247.101 Policies.

(h) *Shipping documents covering f.o.b. origin shipments.*

(i) Procedures for the contractor to obtain bills of lading are in the clause at 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions.

(ii) The term “commercial bills of lading” includes the use of any commercial form or procedure.

[77 FR 39140, June 29, 2012]

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.200 Scope of subpart.

This subpart does not apply to the operation of vessels owned by, or bareboat chartered by, the Government. See additional guidance at PGI 247.200 for procurement of transportation or related services.

[75 FR 51417, Aug. 20, 2010]

247.206 Preparation of solicitations and contracts.

Consistent with FAR 15.304 and 215.304, consider using the following as evaluation factors or subfactors:

(1) Record of claims involving loss or damage; and

(2) Commitment of transportation assets to readiness support (*e.g.*, Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

[75 FR 51417, Aug. 20, 2010]

247.207 Solicitation provisions, contract clauses, and special requirements.

(1) Use the clause at 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for carriage in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment.

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(2) Use the clause at 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when shipping under Bills of Lading and Domestic Route Order under FOB origin contracts, Export Traffic Release regardless of FOB terms, or foreign military sales shipments.

[77 FR 39140, June 29, 2012, as amended at 78 FR 37989, June 25, 2013]

247.270 Stevedoring contracts.

247.270-1 Definitions.

Commodity rate is—

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity; and

(2) Computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity that can be handled in 1 hour.

Gang cost is—

(1) The total hourly wages paid to the workers in the gang, in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port; and

(2) Payments for workmen's compensation, social security taxes, unemployment insurance, taxes, liability and property damage insurance, general and administrative expenses, and profit.

Stevedoring is the—

(1) Loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel; or

(2) Breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

[56 FR 36466, July 31, 1991, as amended at 65 FR 50144, Aug. 17, 2000. Redesignated at 75 FR 51417, Aug. 20, 2010]

247.270-2 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including rail car, truck, or intermodal equipment loading and unloading, or other dock and terminal

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work under a stevedoring contract, include these requirements as separate items of work.

[65 FR 50144, Aug. 17, 2000. Redesignated at 75 FR 51417, Aug. 20, 2010]

247.270-3 Evaluation of bids and proposals.

As a minimum, require that offers include—

(a) Tonnage or commodity rates that apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates that apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Rates for equipment rental.

[65 FR 50144, Aug. 17, 2000. Redesignated at 75 FR 51417, Aug. 20, 2010]

247.270-4 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated:

(a) 252.247-7000, Hardship Conditions, in all solicitations and contracts.

(b) 252.247-7001, Price Adjustment, when using sealed bidding.

(c) 252.247-7002, Revision of Prices, when using negotiation.

(d) 252.247-7004, Indefinite Quantities—Fixed Charges, when the contract is an indefinite-quantity type and will provide for the payment of fixed charges.

(e) 252.247-7005, Indefinite Quantities—No Fixed Charges, when the contract is an indefinite-quantity type and will not provide for the payment of fixed charges.

(f) 252.247-7006, Removal of Contractor's Employees, in all solicitations and contracts.

(g) 252.247-7007, Liability and Insurance, in all solicitations and contracts.

[65 FR 50144, Aug. 17, 2000. Redesignated at 75 FR 51417, Aug. 20, 2010]

247.271 Contracts for the preparation of personal property for shipment or storage or for performance of intra-city or intra-area movement.

247.271-1 Policy.

(a) *Annual contracts.* Normally—

(1) Use requirements contracts to acquire services for the—

- (i) Preparation of personal property for shipment or storage; and
- (ii) Performance of intra-area movement.

(2) Award contracts on a calendar year basis.

(3) Provide for option years.

(4) Award contracts, or exercise option years, before November 1 of each year, if possible.

(b) *Areas of performance.* Define clearly in the solicitation each area of performance.

(1) Establish one or more areas; however, hold the number to a minimum consistent with local conditions.

(2) Each schedule may provide for the same or different areas of performance. Determine the areas as follows—

(i) Use political boundaries, streets, or any other features as lines of demarcation. Consider such matters as—

(A) Total volume;

(B) Size of overall area; and

(C) The need to service isolated areas of high population density.

(ii) Specifically identify frequently used terminals, and consider them as being included in each area of performance described in the solicitation.

(c) *Maximum requirements-minimum capability.* The contracting officer must—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.9-R, Defense Transportation Regulation, Part IV;

(2) Ensure that the Government's minimum acceptable daily capability—

(i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and

(ii) Will encourage maximum participation of small business concerns as offerors.

[56 FR 36466, July 31, 1991, as amended at 65 FR 50145, Aug. 17, 2000. Redesignated at 75 FR 51417, Aug. 20, 2010]

247.271-2 Procedures.

Follow the procedures at PGI 247.271-2 for contracting for the preparation of personal property for shipment or storage.

[75 FR 51417, Aug. 20, 2010]

247.271-3 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, or for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) Use the basic or the alternate of the provision at 252.247-7008, Evaluation of Bids.

(1) Use the basic provision when there are no "additional services" items being added to the schedule.

(2) Use the alternate I provision when adding "additional services" items to the schedule.

(b) The provision at 252.247-7009, Award.

(c) In solicitations and resulting contracts, the schedules provided by the installation personal property shipping office. Follow the procedures at PGI 247.271-3(c) for use of schedules.

(d) The clause at 252.247-7010, Scope of Contract.

(e) The clause at 252.247-7011, Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period must not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216-18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.504(a)(4)(vii), document the oral orders in accordance with department or agency instructions.

(g) The clause at 252.247-7012, Ordering Limitation.

(h) The clause at 252.247-7013, Contract Areas of Performance.

(i) The clause at 252.247-7014, Demurrage. See additional information at

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PGI 247.271-3(c)(1) for demurrage and detention charges.

(j) The clause at 252.247-7016, Contractor Liability for Loss and Damage.

(k) The clause at 252.247-7017, Erroneous Shipments.

(l) The clause at 252.247-7018, Subcontracting.

(m) The clause at 252.247-7019, Drayage.

(n) The clause at 252.247-7020, Additional Services.

(o) The clauses at FAR 52.247-8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247-13, Accessorial Services—Moving Contracts.

(p) See the prescription at 216.506(d) requiring the use of 252.216-7010, Requirements.

[56 FR 36466, July 31, 1991, as amended at 65 FR 50145, Aug. 17, 2000. Redesignated and amended at 75 FR 51417, Aug. 20, 2010; 78 FR 38235, June 26, 2013; 79 FR 22037, Apr. 21, 2014]

Subpart 247.3—Transportation in Supply Contracts

247.301 General.

See PGI 247.301 for transportation guidance relating to Government Purchase Card purchases that require shipments to destinations outside CONUS.

[75 FR 51417, Aug. 20, 2010]

247.301-70 Definition.

“Integrated logistics managers” or “third-party logistics providers” means providers of multiple logistics services. Some examples of logistics services are the management of transportation, demand forecasting, information management, inventory maintenance, warehousing, and distribution.

[65 FR 50145, Aug. 17, 2000]

247.301-71 Evaluation factor or subfactor.

For contracts that will include a significant requirement for transportation of items outside CONUS, include an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs (e.g., Civil Reserve

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Air Force Fleet and Voluntary Intermodal Sealift Agreement).

[65 FR 50145, Aug. 17, 2000]

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305-10 Packing, marking, and consignment instructions.

Follow the procedures at PGI 247.305-10 for preparation of consignment instructions.

[75 FR 51417, Aug. 20, 2010]

247.305-70 Returnable containers other than cylinders.

Use the clause at 252.247-7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, or other returnable containers if the contractor is to retain title to the containers.

[75 FR 51417, Aug. 20, 2010]

247.370 DD Form 1384, Transportation Control and Movement Document.

The transportation office of the shipping activity prepares the DD Form 1384 to accompany all shipments made through a military air or water port, in accordance with DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 203. A link to this document is available in PGI 247.370.

[75 FR 51418, Aug. 20, 2010]

247.371 DD Form 1653, Transportation Data for Solicitations.

The transportation specialist prepares the DD Form 1653 to accompany requirements for the acquisition of supplies. The completed form should contain recommendations for suitable f.o.b. terms and other suggested transportation provisions for inclusion in the solicitation.

[75 FR 51418, Aug. 20, 2010]

247.372 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to

the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

[56 FR 36466, July 31, 1991. Redesignated at 75 FR 51418, Aug. 20, 2010]

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

This subpart—

(a) Implements—

(1) The Cargo Preference Act of 1904 (“the 1904 Act”), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, DoD;

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam; and

(3) Section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), which addresses requirements that apply to riding gang members and DoD-exempted individuals (see 252.247-7027(c)) who perform work on U.S.-flag vessels under DoD contracts for transportation services documented under chapter 121, title 46 U.S.C.

(b) Does not specifically implement the Cargo Preference Act of 1954 (“the 1954 Act”), 46 U.S.C. 1241(b). The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act’s requirements; and

(c) Does not apply to ocean transportation of the following products, in which case FAR subpart 47.5 applies:

(1) Products obtained for contributions to foreign assistance programs.

(2) Products owned by agencies other than DoD, unless the products are clearly identifiable for eventual use by DoD.

[65 FR 50146, Aug. 17, 2000, as amended at 72 FR 49205, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008; 75 FR 65438, Oct. 25, 2010]

247.571 Definitions.

As used in this subpart—

(a) *Components, foreign flag vessel, ocean transportation, supplies, and U.S.-flag vessel* have the meaning given in the clause at 252.247-7023, Transportation of Supplies by Sea.

(b) *Reflagging or repair work* has the meaning given in the clause at 252.247-7025, Reflagging or Repair Work.

(c) *Covered vessel, foreign shipyard, overhaul, repair, and maintenance work, shipyard, and U.S. shipyard* have the meaning given in the provision at 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Non-contiguous Trade.

[78 FR 37989, June 25, 2013]

247.572 Policy.

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors shall transport supplies, as defined in the clause at 252.247-7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods; or

(3) The proposed freight charges are excessive or unreasonable.

(b) Contracts must provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c) In accordance with 10 U.S.C. 2631(b)—

(1) Any vessel used under a time charter contract for the transportation of supplies under this section shall have any reflagging or repair work, as defined in the clause at 252.247-7025, Reflagging or Repair Work, performed in the United States or its outlying areas, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to the acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary

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determines that such waiver is critical to the national security of the United States.

(d) In accordance with Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364)—

(1) When obtaining carriage requiring a covered vessel, the contracting officer must consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam; and

(2) DoD must submit an annual report to the congressional defense committees, addressing the information provided by offerors with regard to overhaul, repair, and maintenance for covered vessels performed in the United States or Guam.

(e) In accordance with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), DoD may not award, renew or extend, or exercise an option under a charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C., unless the contract contains the clause at 252.247-7027.

[65 FR 50146, Aug. 17, 2000, as amended at 70 FR 35545, June 21, 2005. Redesignated and amended at 72 FR 49206, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008; 75 FR 65438, Oct. 25, 2010; 78 FR 37990, June 25, 2013; 79 FR 61583, Oct. 14, 2014]

247.573 General.

(a) *Delegated authority.* Pursuant to 10 U.S.C. 2631(a) and Secretary of Defense Memorandum dated February 7, 2012, (see PGI 245.573) the authority to make determinations of excessive ocean liner rates and excessive charter rates is delegated to—

(1) The Commander, United States Transportation Command, for excessive ocean liner rate determinations; and

(2) The Secretary of the Navy for excessive charter rate determinations.

(b) *Procedures.* (1) Contracting officers shall follow the procedures at PGI 247.573(b)(1) when purchase of ocean transportation services is incidental to a contract for supplies, services, or construction.

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(2) Contracting officers shall follow the procedures at PGI 247.573(b)(2) when direct purchase of ocean transportation services is the principal purpose of the contract.

(3) Agency and department procedures relating to annual reporting requirements of information received from offerors in response to solicitation provision 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise of Noncontiguous Trade, are found at PGI 247.573(b)(3).

(4) Procedures are provided at PGI 247.573(b)(4) to accomplish security background checks pursuant to clause 252.247-7027, Riding Gang Member Requirements.

[79 FR 61583, Oct. 14, 2014]

247.574 Solicitation provisions and contract clauses.

(a)(1) Use the provision at 252.247-7022, Representation of Extent of Transportation by Sea, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, except—

(i) Those for direct purchase of ocean transportation services; or

(ii) Those with an anticipated value at or below the simplified acquisition threshold.

(2) If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.247-7022 in the solicitation.

(b) Use the basic or one of the alternatives of the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except those for direct purchase of ocean transportation services.

(1) Use the basic clause unless any of the supplies to be transported are commercial items that are—

(i) Shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract; or

(ii) Commissary or exchange cargoes transported outside of the Defense

Transportation System when the contract is not a construction contract.

(2) Use the alternate I clause if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract.

(3) Use the alternate II clause if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System (10 U.S.C. 2643), when the contract is not a construction contract.

(c) Use the clause at 252.247-7024, Notification of Transportation of Supplies by Sea, in all contracts, including contracts using FAR part 12 procedures for the acquisition of commercial items, for which the offeror made a negative response to the inquiry in the provision at 252.247-7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247-7025, Re-flagging or Repair Work, in all time charter solicitations and contracts, including time charter solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.572(c)(2).

(e) Use the provision at 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that require a covered vessel for carriage of cargo for DoD.

(f) Use the clause at 252.247-7027, Riding Gang Member Requirements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the charter of, or contract for carriage of

cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C.

[56 FR 36466, July 31, 1991, as amended at 59 FR 10580, Mar. 7, 1994; 60 FR 29501, June 5, 1995; 64 FR 2598, Jan. 15, 1999; 65 FR 14401, Mar. 16, 2000; 67 FR 38021, May 31, 2002. Redesignated and amended at 72 FR 49206, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008; 75 FR 65438, Oct. 25, 2010; 76 FR 61281, Oct. 4, 2011; 78 FR 37990, June 25, 2013; 78 FR 40043, July 3, 2013; 79 FR 22038, Apr. 21, 2014; 79 FR 61584, Oct. 14, 2014]

PART 249—TERMINATION OF CONTRACTS

Subpart 249.1—General Principles

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249.105-1 Termination status reports.

249.105-2 Release of excess funds.

249.109 Settlement agreements.

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Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.

249.7001 Congressional notification on significant contract terminations.

249.7002 [Reserved]

249.7003 Notification of anticipated contract terminations or reductions.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36471, July 31, 1991, unless otherwise noted.

Subpart 249.1—General Principles

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105-1 Termination status reports.

Follow the procedures at PGI 249.105-1 for reporting status of termination actions.

[71 FR 27645, May 12, 2006]